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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 604.

CHARLES H. BALDWIN, as Commissioner of Agriculture and Markets of the State of New York, and others, *Appellants,*

against

G. A. F. SEELIG, INC., *Respondent.*

No. 605.

G. A. F. SEELIG, INC., *Appellant,*

against

CHARLES H. BALDWIN, as Commissioner of Agriculture and Markets of the State of New York, and others, *Respondents.*

BRIEF FOR APPELLEE

(In No. 604; also for Appellant in No. 605)

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IN THE
OCTOBER TERM, 1934.

CHARLES H. BALDWIN, as Commissioner of Agriculture and Markets of the State of New York, and others, *Appellants,* against G. A. F. SEELIG, INC., *Respondent.*	No. 604
G. A. F. SEELIG, INC., *Appellant,* against CHARLES H. BALDWIN, as Commissioner, etc., and others, *Respondents.*	No. 605

BRIEF FOR APPELLEE

(In No. 604; also for Appellant in No. 605)

The Opinion Below.

The opinion of the court below (*G. A. F. Seelig, Inc.* v. *Baldwin,* 7 F. Supp. 776, Aug. 2, 1934), rendered after hearing by a statutory court, convened pursuant to the provisions of Section 380 of Title 28 of the United States Code (Judicial Code, Section 266, amended), resulted in the entry of a decree, which decree was, upon appeal

to the Supreme Court, held to be an interlocutory decree, involving no error of discretion, and hence affirmed without consideration of the merits (*Baldwin* v. *G. A. F. Seelig, Inc.*, 293 U. S. ____, memo. Oct, 15, 1934).

Subsequently there was presented before the same statutory court, upon the same papers and in addition thereto an agreed statement of facts (R. 57), plaintiff's application for a final injunction, opposed by defendants, and defendants' motion to dismiss, opposed by plaintiff. The latter motion was denied and the former motion was granted in part and denied in part. In connection with the final decree (R. 64), from which the appeal and cross-appeal now presented are prosecuted, the statutory court adopted the findings of fact (R. 57) and referred to its opinion of August 2, 1934 (R. 56) for conclusions of law.

Jurisdiction.

The respective parties hereto have presented to this Court a joint statement disclosing the basis upon which it is contended that this Court has jurisdiction upon appeal to review the decree in question, as required by Supreme Court Rule 12, paragraph 1, and on January 14, 1935 this court found probable jurisdiction.

An application for an early hearing, made by all parties, was granted (January 14, 1935) and the two appeals assigned for argument on February 11, 1935.

Statement of Facts.

In this suit for injunction, the plaintiff, G. A. F. Seelig, Inc., a milk dealer, contests the validity, under Section 8 of Article I and the Fourteenth Amendment to the Constitution of the United States, of provisions of the New York Milk Control Law fixing the price to be paid to producers in the State of Vermont for milk shipped into and sold in the State of New York.

A District Court of three Judges, organized in accordance with Section 266 of the Judicial Code (U. S. C. Title 28, Section 380) has denied a motion by the defendant The Division of Milk Control of New York State, to dismiss the bill, and granted in part and denied in part the motion of the milk dealer for a permanent injunction.

The Attorney General of the State of New York and the District Attorney of New York County were made parties defendant in the Court below because it is their duty to enforce the criminal provisions of the New York Milk Control Law.

No testimony was taken, but the allegations of the bill of complaint and the affidavits of the respective parties were consolidated in a stipulated statement of facts and adopted as findings herein (R. 57).

Charles H. Baldwin, as Commissioner of Agriculture and Markets of the State of New York, who, as head of the Division of Milk Control of that State, is charged with the enforcement of provisions of the Milk Control Law, has taken what may be fittingly called the chief or main appeal herein from the final decree of the District Court (R. 64) and is designated in this brief as the appellant.

G.-A. F. Seelig, Inc., the milk dealer, has taken a cross-appeal from certain parts of the same decree and for the sake of brevity and clearness is hereinafter called the appellee.

The grievance of the milk dealer is that the decree of the District Court excluded from the injunctive protection afforded thereby the milk shipped into New York and there pasteurized and bottled.

For an understanding of the milk dealer's position in respect to the part of the interstate shipment of milk that is bottled within New York City, certain regulations of the Sanitary Code of the Board of Health of the Department of Health of New York City must be considered. The first of these is that the sale of loose milk in

New York City is absolutely forbidden and the second is that all bottling must be done at the point or place of pasteurization of the milk.

The regulations of the Sanitary Code of the Board of Health of the Department of Health of the City of New York to which reference is made are as follows:

> *Regulation 159-B, Section (a)*: "No milk shall be offered for sale, sold or shall be dispensed direct to the consumer in the City of New York in any container other than in bottles or individual containers, filled, and properly capped and labeled at the plant where pasteurized except where such milk is dispensed to the consumer from a pump or other similar mechanical dispensing device approved by the Board of Health in accordance with the regulations made and adopted thereunder."
>
> *Regulation 129, Section (e)*: "Pasteurized milk shall be bottled at the place of Pasteurization."

It is not economically practical for the milk dealer to break up at the Creamery in Vermont from which shipment is made each day's shipment of milk into smaller than can lot units, as may be necessary to meet the daily requirements of every customer to whom the milk is consigned.

Part of the daily shipment is therefore taken by the milk dealer to a pasteurizing plant in New York City, the milk processed, bottled and immediately reclaimed by the dealer and delivered to its customers in sealed bottles. The Court below found that this processing in New York caused this part of the shipment to lose its interstate characteristics, and as part of the mass of the products of New York State to be subject to the control of the New York Division of Milk Control. This is the only error urged by G. A. F. Seelig, Inc., as cross-appellant herein.

G. A. F. Seelig, Inc., obtains its principal supply of milk from Seelig Creamery Corporation, which in turn purchases from certain selected farmers or producers located in and about the Seelig Creamery Corporation receiving plant at Fair Haven, Vermont. Seelig Creamery Corporation is not a producer of milk and its operations are confined wholly to the State of Vermont. Seelig Creamery Corporation and G. A. F. Seelig, Inc., are, and always have been, separate and distinct corporate entities and neither corporation owns, holds or controls stock in the other.

G. A. F. Seelig, Inc., takes the total daily output of the Seelig Creamery Corporation. A purchase of milk, known in the milk trade as a "spot purchase", is occasionally made by G. A. F. Seelig, Inc., from some other creamery also located at Fair Haven, Vermont, as its daily needs may require.

Complete reports have at all times been made by G. A. F. Seelig, Inc., to the Milk Control authorities, showing the disposition and use made within New York State of the milk and cream imported from Vermont. No question of a violation of the Sanitary Code of New York City is charged against G. A. F. Seelig, Inc., in respect to the handling of the milk, nor has any question been raised that G. A. F. Seelig, Inc., has changed in any way, since the advent of the milk control statutes, to evade or attempt to evade the disputed provisions of said statutes, its customary method of conducting its business.

Although no question has been directly raised as to the propriety of the remedy sought by G. A. F. Seelig, Inc., in this proceeding, in view of this Court's decision in *Hegeman Farms Corp.* v. *Baldwin*, 293 U. S. ..... (Nov. 5, 1934), it is considered proper to set forth briefly (Point II of this Brief, p. 10) the matter believed to justify the bringing of this injunction action.

Specification of Errors.

The only error that G. A. F. Seelig, Inc., as cross-appellant, will urge is that the Court below was in error in excluding from the injunctive protection of the decree herein the milk brought in from Vermont and processed and bottled in New York.

Outline of Argument.

(As Cross-Appellant)

POINT I. As the processing and bottling of milk are component parts of the interstate transportation, the District Court was in error in excluding such part of the shipment from the injunctive protection of its decree.

(As Appellee)

POINT II. Appellee has pursued the only remedy available.

A. Appellee has fully exhausted the administrative remedies provided in the Milk Control Law (N. Y. Laws 1933, Chap. 158), Sec. 312 (d) (f).

B. Except that it waive its right to attack the constitutionality of the Statute in question, appellee had to seek injunctive relief.

POINT III. The Statutory provision attacked deprives appellee of its property without due process of law.

POINT IV. The Statutory provision attacked is unconstitutional and invalid under Article I, Section 8, of the Constitution.

POINT I.

As the processing and bottling of milk are component parts of the interstate transportation, the District Court was in error in excluding such part of the shipment from the injunctive protection of its decree.

Approximately ten per cent of appellee's daily shipment of milk from the creameries at Fair Haven, Vermont, comes in as raw or unpasteurized milk. This raw milk, in appellee's own cans, is taken upon arrival in New York City to a pasteurizing plant there, processed, bottled and delivered back to appellee in sealed bottles bearing its own name and label. These bottles are then delivered by appellee to its customers. This method of handling its daily import of milk has been followed by the appellee for many years.

We contend that the Court below was in error as to the time when this part of the shipment became part of the mass of the goods of New York State. All of the sales of milk, whether in bottles or cans, were made by the appellee before the milk to fulfill the sales was sent to New York. The very nature of the product requires that the milk dealer shall have a consumer ready to take delivery of the fluid milk as soon as imported. Storage for future sale or delay of any sort destroys the value of the fluid milk. Irrespective of how transported, the sales of fluid milk and cream are in fact contracts for the sale and delivery of fluid milk across State lines. Such transactions are interstate commerce in its essence and until the delivery is completed the interstate movement of the milk has not come to an end. "In determining what is interstate commerce, courts look to practical considerations and the established course of business." *Foster-Fountain Packing Co.* v. *Haydel,* 278 U. S. 1, at page 10.

Doubt arises, of course, where there is any sort of interruption in the journey. Here the temporary arresting of the milk is required as a health measure (Regulation 159-B, Section (a); Regulation 129, Section (e) of the Sanitary Code of the Board of Health of the Department of Health of the City of New York) (Brief, p. 4). It must be pasteurized and placed in sealed bottles to insure its safety and goodness. It is not stored or mingled with other or similar goods forming any part of the domestic mass of New York State. The fluid milk, before and after pasteurization, retains its identity as far as anything of that nature could possibly do so. Concededly it is the same in quantity and just as distinguishable from the mass of domestic goods of the State as it was before pasteurization.

It is our contention that the decisions of this Court in such cases as *General Oil Co.* v. *Crain,* 209 U. S. 211, *Bacon* v. *Illinois,* 227 U. S. 504, *Champlain Realty Company* v. *Brattleboro,* 260 U. S. 366, and *Minnesota* v. *Blasius,* 290 U. S. 1, are not controlling under the facts of the instant case. Those cases involved the question of local taxation upon goods placed in storage. In the case at bar the Milk Control Law is not a tax statute, nor is the milk brought in from Vermont placed in storage in any manner.

The rule of the "original package" is not an ultimate principle. It is an illustration of a principle. It assumes transmission in packages, and then supplies a test of the unity of the transaction. The law does not seek to find what the parties *may* do, but what, in the usual course, it is expected they will do.

> "If the normal, contemplated and followed course is a transmission as continuous and rapid as science can make it from Exchange to broker's office, it does not matter what are the stages or how little they are secured by covenant or bond." *Western Union Tel. Co.* v. *Foster,* 247 U. S. 105, at page 113.

It is admitted that appellee's transportation of the milk from Vermont to New York is interstate commerce. If so, it continues such until it reaches "the point where the parties originally intended that the movement should finally end" (*Illinois Central R. R. Co.* v. *Louisiana R. R. Commission,* 236 U. S. 157, page 163). Appellee's customers cannot be expected to call at the pasteurizing plant for the milk which was ordered to be delivered to their doorsteps. Practice, intent and the typical method followed by the importer determine the character of the unity or continuity of the transaction. The wants of appellee's customers are known, and the milk is transported, not to be held, but to be used. Pasteurization takes place, not because the importer wills it, but because the health regulations require the milk to be so treated. Any interruption in the interstate movement of the milk thus caused is merely casual and incidental, and the transaction is to be treated as single and continuous. The essential unity of the transaction remains the final test. *Swift* v. *United States,* 196 U. S. 375; *Rearick* v. *Pennsylvania,* 203 U. S. 507.

We therefore repeat that the District Court erred in excluding that part of the milk shipped into New York and processed there, from the injunctive protection afforded by its decree and that said decree should be amended so as to include all the milk shipped to New York from Vermont by the appellee.

POINT II.

Appellee has pursued the only remedy available.

A. Appellee has fully exhausted the administrative remedies provided in the Milk Control Law (N. Y. Laws 1933, Chapter 158), Sec. 312 (d), (f).

Shortly after the original Milk Control Law (N. Y. Laws 1933, Chap. 158) became effective (April 10, 1933), the Milk Control Board called appellee's attention to the fact that its monthly reports made to said Board showed certain discrepancies between the prices fixed by the Board as the basis of payment to producers in New York State and the prices received by producers in Vermont from whom appellee's milk supply was obtained, and that appellee was thereby violating provisions of the Board's order known as "Official Order No. 33" (R. 25), Official Order No. 33 having been made in pursuance of provisions of subdivision (g) of Section 312 of Chapter 158, N. Y. Laws of 1933, which reads as follows:

> "(g) It is the intent of the legislature that the instant, whenever that may be, that the handling within the state by a milk dealer of milk produced outside of the state becomes a subject of regulation by the state, in the exercise of its police powers, the restrictions set forth in this article respecting such milk so produced shall apply and the powers conferred by this article on the board shall attach. After any such milk so produced shall have come to rest within the state, any sale, within the state by a licensed milk dealer or a milk dealer required by this article to be licensed, of any such milk purchased from the producer at a price lower than that required to be paid for milk produced within the state purchased under similar conditions, shall be unlawful."

Appellee immediately protested the right of the Milk

Control Board to enforce said Official Order No. 33 in respect to appellee's business, and asserted its constitutional right to continue to import its milk and conduct its business as it had been doing for many years.

Pursuant to provisions of subdivision (f) of said Section 312, which reads as follows:

> "(f) The board may upon its own motion, or upon application from time to time alter, revise or amend an official order theretofore made with respect to the prices to be charged or paid for milk. After making such investigation and before making, revising or amending any order fixing the price to be charged or paid for milk, the board shall give a hearing thereon to all parties interested upon reasonable notice to such interested parties and to the public of such hearing in such newspaper or newspapers as in the judgment of the board shall afford sufficient notice and publicity. Such order of the board may be reviewed by certiorari order at the instance of any aggrieved person appearing of record at the hearing either in person or by personal representative and opposing the making of the order."

hearings were held before the Milk Control Board, whereat appellant contended its order was a correct interpretation of provisions of subdivision (g) of said Section 312 quoted above (Brief, p. 10), while the appellee again asserted its right to disregard said order and subdivision (g) of Section 312 of the Milk Control Law as constitutionally invalid.

Because of the apparently irreconcilable positions of the respective parties, the Milk Control Board as then constituted (November, 1933) commenced an action in the Supreme Court of the State of New York against the appellee, wherein it sought to enjoin the appellee from selling milk in New York State in alleged violation of the statute in question.

Before this action was brought to trial, the first Milk Control Law terminated by its own provisions and like-

wise the license of the appellee (March 31, 1934). Although the issue in the state court action remained a live one, the milk dealer, with the termination of the original Milk Control Law, was now without a license and could not longer operate as such milk dealer, and there was then, of course, no purpose in the Milk Control Board pursuing the action in the State Court.

B. Except that it waive its right to attack the constitutionality of the statute in question, appellee had to seek injunctive relief.

Upon the enactment of the present milk control statute (N. Y. Laws 1934, Chap. 126, not yet officially compiled) and the refusal of the Division of Milk Control, which succeeded to the powers and duties of the former Milk Control Board, to issue a milk dealer's license to appellee upon application made therefore, except that appellee should first agree in writing to obey all the provisions of the new milk control law, which contains a provision similar to that of the original statute, the validity of which appellee has all through this controversy resisted, appellee had no other remedy than to proceed as it did for injunctive relief. Such remedy was not open to appellee in the State courts, since under the laws of New York a court of that State may not enjoin the enforcement of a criminal statute. Continuation of appellee's business without first obtaining such license rendered appellee and all milk dealers dealing with appellee liable to the imposition of severe penalties and fines (Sections 39, 40 and 41 of Article 3, Farms and Markets Law, N. Y. Laws 1922, Chap. 48) (R. 26-27) and the officers, agents and employees of the appellee and of any and all milk dealers dealing with appellee liable to imprisonment.

The only way appellee and others dealing with it could

escape the aforementioned penalties was for appellee to waive in writing its right to test the validity of the statute in question.

Further appeal or protest to the Division of Milk Control was, of course, out of the question, and an attempt to challenge the validity of the statute complained of by a single violation thereof would have resulted in the complete suspension of appellee's business until there could be a determination of such issue.

Appellee's right to equitable relief was, we contend, fully established by the foregoing facts.

Stafford v. *Wallace,* 258 U. S. 495;
Ex Parte Young, 209 U. S. 123.

POINT III.

The statutory provision attacked deprives appellee of its property without due process of law.

G. F. Seelig, Inc., the appellee, has at all times followed and complied with the orders of the milk control authorities governing the sales prices to be charged its consumers upon the sale of its milk within New York State (R. 62).

Appellee likewise has for many months prior to the commencement of this suit, paid to Seelig Creamery Corporation and to such other creameries from which it may occasionally purchase part of its milk supply in Vermont, the amounts required of it to be paid to comply with Official Order No. 33 and all other orders of the milk board in relation to the fixation of prices.

Compliance with these orders by the appellee has necessitated the abrogation of the contracts existing between appellee and Seelig Creamery Corporation (R. 45). This has caused the appellee to be deprived

of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution. *American Express Company* v. *Iowa*, 196 U. S. 133.

Appellee has no contact whatsoever with the producers who supply the creameries in Vermont. Neither is appellee in a position to insist that said creameries pay their producers such prices as may be fixed by the New York Milk Control Board.

This situation results in the New York milk authorities striking at the appellee through the medium of declaring the milk so purchased in Vermont to be outlawed if and when that milk is brought into New York State for sale therein.

Concededly the Vermont creameries are not paying their producers the New York classified price (R. 48). It must also be conceded that appellee cannot enforce such payments. Appellee might, of course, withdraw from the field entirely, but we contend there is no legal obligation upon it to do so. Vermont has been for a great many years the source of its milk supply and it should be permitted to continue to conduct its business in that milk shed free of the restrictions that the milk control law of New York enforce upon it.

Under Official Order No. 17 (R. 16), the milk control authorities have established, for payment to producers of milk sold within the State of New York, a unified classification price plan, whereby the ultimate price per quart paid to the farmer is based upon the use to which the milk dealer puts the milk. There are approximately nine possible classifications of use, all at fixed—but different—prices, with the average thereof being paid to the producer at the end of each month or other accounting period, as may be arranged between the parties concerned.

For many years prior to the enactment of the New York milk control laws, farmers were paid, generally, upon the basis of what was known unofficially in the

milk business as the "Sheffield price", which price is believed to be, though never actually known, based upon a weighted average of fluid milk purchased by the Sheffield company.

We are informed and believe that in those milk sheds supplying the City of New York where no price regulations are in force, the "Sheffield price" is still used. We know this to be the situation in and about the Fair Haven, Vermont, milk shed—the one with which we are concerned. The producers in and about the Fair Haven milk shed are accordingly paid so much per quart or pound of milk furnished by them, without regard to how the dealer shall dispose of or use the same. The dealer runs all the risk of making a profitable or other use of the milk he has purchased.

Although the so-called underpayments charged to the Seelig Creamery Corporation in Exhibit to Affidavit, folio 122 (R. 48) appear to be substantial, we know that it will stand without contradiction that the producers in the Fair Haven milk shed, paid at a price based upon the "Sheffield price", have actually received more per quart or pound for their milk during the period covered by Exhibit "D" than the average producer within the State of New York has received under the New York classified plan during the same period.

We therefore contend that compliance by the appellee with the statute complained of has deprived it of its property without due process of law.

Dobbins v. *Los Angeles,* 195 U. S. 223.

POINT IV.

The statutory provision attacked is unconstitutional and invalid under Article I, Section 8, of the Constitution.

The appellee protests the validity of subsection 4 of Section 258-m of Article 21-A of the Agriculture and Markets Law of New York State (New York Laws 1934, Chap. 126, not officially compiled), which reads as follows:

> "4. It is the intent of the legislature that the instant, whenever that may be, that the handling within the state by a milk dealer of milk produced outside of the state becomes a subject of regulation by the state, in the exercise of its police powers, the restrictions set forth in this article respecting such milk so produced shall apply and the powers conferred by this article shall attach. After any such milk so produced shall have come to rest within the state, any sale, within the state by a licensed milk dealer or a milk dealer required by this article to be licensed, of any such milk purchased from the producer at a price lower than that required to be paid for milk produced within the state purchased under similar conditions, shall be unlawful."

The District Court held the above quoted section invalid so far as the act prevented the import of milk in cans.

Insofar as the opinion below covered the ground in respect to the milk in cans, we rely heavily upon its reasoning and shall not repeat it in this brief.

Under Point I of this brief, we have endeavored to set forth the grounds of our belief that the District Court was in error in excluding the so-called bottled milk as not within the protection afforded an interstate shipment and we contend that the total shipment of milk should be considered as one.

Holding to our desire not to burden this Court with a mere repetition of the reasoning and cases cited in the opinion below, we do wish, however, to add a few observations by way of supplement.

Approximately thirty per cent of the fluid milk marketed and consumed in the New York City market comes from other states (R. 61). The quantities and origins of this imported milk for the month of April, 1934, are set forth in Exhibit to Affidavit, folio 121 (R. 47).

Likewise, a substantial part of the milk produced within New York State and marketed in New York City passes through another state (New Jersey) on its way to the New York City market, which might better be described as the "Metropolitan market". The term "Metropolitan market" is described at page 33 of the Report of the Joint Legislative Committee to Investigate the Milk Industry—New York Legislative Document (1933) 114 (commonly known as the Report of the Pitcher Committee), as including a small area in Connecticut, New York City, five counties of New York outside of the City of New York and eight counties in New Jersey, with an aggregate population of more than ten million people. The territory of the Metropolitan market—composed of parts of three states—is therefore not a local one. It is an interstate market.

In view of the fact that milk is imported into New York from some ten different states (Exhibit to Affidavit, folio 121, R. 47), there is a general current of interstate commerce involved and it is therefore submitted that the control thereof should be by Congress, instead of by the several individual states, as it is at present.

In the case of *Stafford* v. *Wallace*, 258 U. S. 495, this Court pointed out that certain businesses are more of a national character than local. This may well be said of the milk industry, where, though not wholly like the business of a stockyard, the constant flow of commerce between the several states supplying the Metropolitan

market place the milk industry in much the same category as nation-wide industries and the control thereof should be left to Congress.

It was partly this distinction of what might or might not be validly controlled by state legislation upon which state control was declared improper in *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50 and *Shafer* v. *Farmers Grain Co.*, 268 U. S. 198. In each of these cases it was declared that if the farmers of North Dakota were suffering from evils existent in the industry, it was for Congress, and not for the state legislature, to enact remedial legislation. The same may well be said of the milk industry in New York State.

Even in those cases where Congress has not exercised its paramount power, a state may not, in the management of its internal affairs, place unreasonable burdens upon interstate commerce. The question resolves itself into the problem of whether New York State has "directly" regulated interstate commerce. We contend it has.

The Minnesota Rate Cases, 230 U. S. 352.
Missouri v. *Kansas Natural Gas Co.*, 265 U. S. 298.

The provisions of the New York milk statute in question do not, of course, forbid the importation of the Vermont milk, but they do forbid sale of such milk after it has arrived in New York. What could be a more direct restraint upon interstate commerce?

The real purpose of the New York milk statute in question is, we contend, to force all New York milk dealers to purchase their milk from New York producers, and thus eliminate all foreign competitors of the New York producer from that market to which the New York farmer contends, through his legislature, he has first right. The accomplishment of such a purpose, i.e., to protect a local market by the exclusion of foreign com-

peting goods, is exactly the type of legislation against which the commerce clause of our Constitution is directed. Except and unless Congress sees fit to allow protective economic barriers between the States, the barrier that New York has attempted to place about its own milk producers is wholly without constitutional sanction.

We contend that the facts in the case at bar are very similar to those in *Schollenberger* v. *Pennsylvania*, 171 U. S. 1, and that this Court's decision in that case is decisive of the question of the invalidity of the New York milk control statute herein complained of.

In addition to the cases cited in the opinion of the Court below (R. 49) and those cited in this Brief, the following decisions, made since 1921, have held invalid States' statutes or regulations as contravening the Commerce Clause of the Constitution.

St. Louis & San Francisco Railway Co. v. *Public Service Commission of Missouri*, 254 U. S. 535.

Order of Public Service Commission as to the routing of two through interstate day passenger trains held invalid.

Lemke v. *Homer Farmers Elevator Company*, 258 U. S. 65.

North Dakota grain inspection act held invalid for the reasons set forth in *Lemke* v. *Farmers Grain Company* (*supra*), 258 U. S. 50.

St. Louis-San Francisco Railway Co. v. *Public Service Commission of Missouri*, 261 U. S. 369.

Order of Public Service Commission to stop through trains held invalid.

Davis v. *Farmers Co-operative Equity Company*, 262 U. S. 312.

Solicitation of traffic by railroads in states remote from their lines is part of their interstate transportation.

Pennsylvania v. *West Virginia*, 262 U. S. 553.

Attempt by a state to restrain piping of natural gas across state line held improper.

Atchison, Topeka & Santa Fe R. Co. v. *Wells*, 265 U. S. 101.

Writ of garnishment held void as applied against a foreign corporation.

Missouri v. *Kansas Natural Gas Co.*, 265 U. S. 298.

The transportation of gas through pipe lines from one state to another, for sale to distributing companies, is interstate commerce, so that the state authorities have no control over the rates to be charged for it, and the fact that Congress has taken no action in the matter is immaterial.

Michigan Public Utilities Commission v. *Duke*, 266 U. S. 570.

A state, under its police power, may not impose the duties and liabilities of a common carrier upon one engaged in performing a contract to transport merchandise for a single manufacturer over the public highways from a plant within a state to a destination in another state.

Buck v. *Kuykendall*, 267 U. S. 307.

A state may not prohibit the use of its highway to some, while granting it to others. The effect of such a regulation is not merely to burden, but to obstruct, interstate commerce.

Bush v. *Maloy,* 267 U. S. 317.

A state cannot forbid the use on its highways of motor vehicles operated by common carriers for hire, over regular routes, in interstate commerce, merely because existing lines of transportation would be prejudiced thereby.

Real Silk Hosiery Mills v. *Portland,* 268 U. S. 325.

An expressed purpose to prevent possible frauds does not justify state legislation which really interferes with the free flow of interstate commerce.

DiSanto v. *Pennsylvania,* 273 U. S. 34.

A state statute which by necessary operation directly interferes with or burdens foreign commerce is a prohibited regulation and invalid, regardless of the purpose for which it is passed, and cannot be sustained as an exercise of police power to prevent possible fraud in the sale of transportation tickets.

Public Utilities Commission v. *Attleboro Steam & E. Co.,* 273 U. S. 83.

The transmission of electric current from one state to another is interstate commerce, although the custody and title are transferred from vendor to purchaser at the state boundary.

Lawrence v. *St. Louis-San Francisco R. Co.,* 278 U. S. 228.

An order of a state railroad commission refusing to permit an interstate railroad company to change a terminal, the effect of which is to impair interstate service, violates the commerce clause of the Federal Constitution.

Furst v. *Brewster,* 282 U. S. 493.

Any state statute which obstructs or lays a direct burden on the exercise of the privilege of engaging in interstate commerce is void under the commerce clause.

Anglo-Chilean Nitrate Sales Corp. v. *Alabama,* 288 U. S. 218.

The constitutional protection against state duties on imports and state interference with interstate or foreign commerce extends to corporations as well as to individuals.

Finally.

It is respectfully submitted that the prayer for relief in the bill should be granted in all respects so as to include that part of the shipment of milk which is pasteurized and bottled in New York State.

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J. DANIEL DOUGHERTY,
On the Brief.